

1 THE HONORABLE THOMAS S. ZILLY  
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9 UNITED STATES DISTRICT COURT  
10 FOR THE WESTERN DISTRICT OF WASHINGTON

11 HUNTERS CAPITAL, LLC, et al.,

12 Case No. 2:20-cv-00983-TSZ

13 Plaintiffs,

14 DECLARATION OF WADE BILLER  
15 IN SUPPORT OF PLAINTIFFS'  
16 RESPONSE TO CITY OF SEATTLE'S  
17 MOTION FOR SPOILIATION AND CITY'S  
18 MOTION FOR SUMMARY JUDGMENT

19 vs.  
20 CITY OF SEATTLE,

21 Defendant.

22 Noting Date: November 15, 2022

23 I Wade Biller, declare as follows:

24 1. I am an individual named Plaintiff and the President of Onyx Homeowners  
25 Association. The Onyx HOA is an HOA located at 12th Ave. and Olive St. in Seattle, and I am a  
26 resident of the building.

27 2. This declaration relates to the Plaintiffs' response to the City of Seattle's Motion  
28 for Spoliation (Dkt. No. 107) and the City's Motion for Summary Judgment (Dkt. No. 111).

29 3. I was on the Board of Onyx HOA in 2020 in June 2020, and I was the  
30 representative that was primarily responsible for the HOA's response to CHOP.

31 4. During CHOP, access to the Onyx HOA's building was diminished by the  
32 placement of barricades in the street at various locations, including 12th Ave. and Olive, 11th

33 DECLARATION OF WADE BILLER IN  
34 SUPPORT OF PLAINTIFFS' TO CITY OF  
35 SEATTLE'S MOTION FOR SPOILIATION AND  
36 MOTION FOR SUMMARY JUDGMENT  
37 (Case No. 2:20-cv-00983-TSZ) - 1

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1 Ave. and Olive St. and 12th Ave. and Pine St.

2       5.     The barricades were frequently moved by the protesters in order to assert their  
3 control over a larger portion of the neighborhood.

4       6.     During and after CHOP, protesters in the neighborhood physically intimidated me  
5 and other residents of the Onyx HOA building. Residents of the Onyx HOA building had had  
6 confrontations with people in Cal Anderson Park.

7       7.     One day during CHOP, a protester entered the courtyard of the Onyx HOA  
8 building and kicked me in the back as I was walking away from him. When I called the police to  
9 report the assault, the caller on 9-1-1 informed me that I would have to walk 8 blocks to the  
10 location of the police, and that the police would not come to the Onyx HOA building.

11      8.     A front door glass of the Onyx building was smashed twice by protesters during  
12 one of the nightly riots after CHOP.

13      9.     Numerous windows of the Onyx HOA building were smashed by protesters  
14 during one of the nightly riots after CHOP. On the second occasion, after CHOP, police from  
15 the Seattle Police Department were watching the protesters march, but yet did nothing to  
16 intercede and stop the protesters from smashing the Onyx HOA building's windows.

17      10.    The protesters in CHOP stole the Onyx HOA building's garbage compactor, but  
18 Onyx HOA was able to get the compactor back the next day.

19      11.    I witnessed the incident involving the Car Tender that occurred on June 14, 2020,  
20 during which a mob of protesters swarmed around the Car Tender's business to demand that the  
21 Car Tender release a burglar/arsonist. During this incident involving the Car Tender, I called 9-  
22 1-1 twice to report the dangerous situation, but was told that police would not intervene. The  
23 City's employees only asked how many persons were present. The police did not come to the  
24 Car Tender.

25      12.    On June 29, 2020, on the night that Antonio Mays Jr. was murdered in the CHOP,

1 at 2:30 a.m. in the morning, a bullet entered one of the units of the Onyx HOA building, and  
 2 lodged into a wall within the unit. The bullet entered the unit not far from the head of a bed  
 3 where a person could have been sleeping. The resident of this unit moved out after the bullet  
 4 entered the unit.

5       13. On September 8, 2020, I was attacked by a woman near the Onyx HOA building  
 6 who was wielding a knife. The woman slashed my forearm with her knife in the attack.

7       14. The protesters frequently blocked traffic in the Street so that you could not drive  
 8 down 12<sup>th</sup> Ave. or Olive St. Sometimes the barriers placed in the street were items such as  
 9 plastic bins, dumpsters, or old furniture. I, along with other residents, would attempt to remove  
 10 the impediments in the public way, only to be threatened by protesters, or to have the materials  
 11 returned.

12           ***Android Avante Phone***

13       15. I used an android Avante phone up until December 2020, when I replaced it with  
 14 an iPhone 12 mini. After I replaced my android Avante phone, I turned it off and stowed it in a  
 15 drawer.

16       16. When I turned my old android Avante phone over to counsel in May 2021, it was  
 17 no longer functioning properly and I could no longer personally access the text messages or  
 18 Signal messages on the phone. Signal messages only exist on the phone that is used for  
 19 messaging, so the Signal messages on my android Avante phone did not automatically transfer  
 20 over to my new iPhone 12 mini.

21       17. My understanding is that tech consultants have been unable to turn the android  
 22 Avante phone on, and that any attempt to retrieve the text messages and other data from the  
 23 phone would cost thousands of dollars and might potentially render the phone permanently  
 24 unusable. In addition, I understand that there is no guarantee that the efforts would be  
 25 successful.

26 DECLARATION OF WADE BILLER IN  
 SUPPORT OF PLAINTIFFS' RESPONSES TO  
 THE CITY OF SEATTLE'S MOTION FOR  
 SPOLIATION AND MOTION FOR SUMMARY  
 JUDGMENT  
 (Case No. 2:20-cv-00983-TSZ) - 3

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1       18. The Onyx HOA did not communicate using text messages. All communication  
2 was by email, phone, over Zoom, or in person. The Onyx HOA has produced emails and  
3 minutes of meetings of the board of directors in this case.

4       19. The text messages and Signal messages may still be retrievable on my old android  
5 Avante phone and have not been deleted to my knowledge.

6       20. My understanding is that Plaintiffs produced a copy of Signal messages from the  
7 Signal message groups in which I participated. The Signal message group called “Our Streets”  
8 was a large group of community residents that wrote about and tracked the activities of protesters  
9 in the Capitol Hill neighborhood during and after CHOP. The group was formed largely in  
10 response to the Seattle Police Department’s modified response policies which left parts of the  
11 area surrounding Cal Anderson Park vulnerable to crime.

12       21. I did not form any of the Signal message group chats that other members of the  
13 Plaintiffs used. I also never used the “disappearing messages” feature in any of my  
14 communications to any of the Signal message groups in which I participated.

15       22. I recall that I joined the Signal message group towards the end of CHOP or  
16 shortly after it was over.

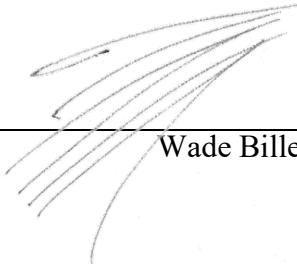
17       23. Plaintiffs did not use Signal because of its encrypted messaging features,  
18 however, Plaintiffs were concerned that protesters and CHOP supporters might intercept their  
19 communications and retaliate or intimidate them.

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1 I declare under the penalty of perjury under the laws of the United States of America and  
2 the State of Washington that the foregoing is true and correct.

3 DATED this 21st day of October, 2022 at Seattle, Washington.

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Wade Biller